

GENERAL AGREEMENT ON

RESTRICTED

Spec(91)60

5 July 1991

TARIFFS AND TRADE

Working Group on Export of Domestically Prohibited
Goods and Other Hazardous Substances

MEETING OF THE WORKING GROUP ON EXPORT OF
DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

16 May 1991

1. The Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances held its fourteenth meeting on 16 May 1991 under the chairmanship of Ambassador John Sankey (United Kingdom).
2. The Chairman recalled that the purpose of this meeting was to allow the one delegation which had reservations on the Draft Decision to present any proposed changes it wished to make to the text. These had been circulated in document DPG/W/10.
3. This delegation stated that its proposal was based on a view of the Decision as residual to the other international agreements in this area. This was most evident in its proposal for Article 1 which would define a "product concerned" as a product already covered by the instruments in Annex II of the Decision and one subject to final governmental regulatory action in a contracting party. New Article 1.2 would replace current Article 3.5 and establish priority to the instruments in Annex II by stating that the Decision would not apply if a contracting party taking domestic action on a product concerned was a signatory or participant of the relevant instrument. In addition this delegation believed that if legal authority did not exist in a country to ban exports, the obligation in Article 3.1 would be meaningless. For that reason it suggested that the prior informed consent procedures, in which this delegation participated, be considered an equivalent measure under the meaning of Article 3.1, thereby obviating the obligations of Article 3.3. Article 3.3 would be better defined if it required notifications solely to the GATT secretariat, and Article 3.5 should be replaced by Article 2.3. A drafting change would be made to Article 4 to make the final phrase consistent with the rest of the Decision, and Article 6 would be amended to make any revision of the list in Annex II subject to the approval of the contracting parties. The change in Article 7 reflected the need to focus on the international instruments which existed. The revision of Article 8 reflected this delegation's fear that the Decision would give rise to legitimate demands for compensation or retaliation from legitimate trade. Also, the nature of the commitments which would be created were not clearly related to the GATT itself and it was not appropriate to provide for access to overall GATT dispute settlement before the conclusions of the negotiations in the Uruguay Round. Consultations would be the proper means for settling any disputes which may arise but if any contracting party believed that its fundamental GATT rights were being violated through any action related to this subject matter, their GATT rights and access to Articles XXII and XXIII remained. Finally, Annex I would be deleted and Annex II would become Annex I.

4. All delegations agreed that the Decision should not duplicate the work of other relevant international instruments, but a broad coverage which included all products that were banned or severely restricted on the grounds that they were dangerous or harmful, was essential to the purpose of this work. They were particularly concerned that the proposal would not include consumer and food products. One delegation noted that since the obligations in the present text were not very severe, an open definition on coverage should be perfectly acceptable, particularly since, in the end, national governments would decide what was to be severely restricted or prohibited. The observer from UNEP explained recent developments related to the definition of banned or severely restricted chemicals (see attachment).

5. One delegation could not accept the deletion of Article 3.5 for the same reasons that it could not accept the changes in Article 1. It also could not accept that prior informed consent procedures be regarded as equivalent to a domestic ban or severe restriction. Another delegation agreed that PIC procedures could be regarded as equivalent, however only for those categories of products to which an internationally established system applied. Both agreed with the revision to Article 3.3.

6. Two delegations did not consider it necessary to revise Article 7, because the proposed language would be redundant and would place an unnecessary limitation on this Article.

7. Some delegations were concerned that the proposed changes to Article 8 would establish a dangerous precedent for the GATT. Disputes arising under the listed international instruments, and in this regard under the provisions of Article 4 of the Decision, could not be brought under the GATT dispute settlement mechanism, and, if necessary, the text could be clarified to reflect this. But recourse to dispute settlement was the backbone of the GATT system and if a contracting party believed that its GATT rights and obligations were being affected under any GATT instrument, it should have recourse to Articles XXII and XXIII. One delegation suggested modifying the proposed language to read "Contracting parties shall have no recourse to GATT Articles XXII and XXIII with regard to matters arising out of Article 4 of this Decision".

8. One delegation stated that his delegation would require some assurance that Article 5 was not intended to apply to sub-national governments. It was not proposing to redraft this Article but asked that a statement be incorporated in an appropriate place, perhaps during the presentation of the text to the CONTRACTING PARTIES, to this effect. It also proposed that there should be an additional Article covering implementation which could read, "This Decision shall enter into force six months from the date of its adoption by CONTRACTING PARTIES".

9. The Group took note of the statements made. It was agreed that a revised text would incorporate the proposed changes to Articles 3.3 and 6.3 as well as some other changes of a drafting nature in Articles 1.1, 1.2(ii), 4, and 5(b). The next meeting of the Group would be held on 14 June 1991.

Statement by the Representative of the
United Nations Environment Programme

Thank you Mr. Chairman. I would like to make a brief remark in relation to some of the statements that have been made in the first place by the distinguished delegation from the United States and, later on, by certain other delegations with regard to coverage of consumer products by the London Guidelines, for example. When the London Guidelines were adopted, we, as the Secretariat, with the FAO, had to start interpreting the way in which governments report to our organizations on control actions to prohibit all uses - that is a ban - or to prohibit most uses - that is a severe restriction - on products covered by the Code of Conduct and the London Guidelines, but in particular the London Guidelines. Analyzing a great number of such notifications as have been made available to us over at least five years, we had a great deal of difficulty in understanding from the notifications in which use category or what certain type of uses was meant by governments when reporting to us on regulatory actions that would fall broadly in this category. We therefore made a comparative analysis of many such notifications on control action and submitted this to a joint FAO/UNEP expert group, which we have established to provide advice to the two Secretariats on interpretation of definitions and notifications of control action received. We were advised to consider and to propose to governments that notifications of control action should clearly indicate in which broad use category a ban or severe restriction was placed by the government and the broad use categories that were advised to us were: agricultural chemicals, including pesticides for all types of use, industrial chemicals and consumer chemicals.

The expert group recommended that in case a chemical would have been banned for use in one of these broad use categories, the definition of a ban would apply. That means that certain chemicals - and this happens not infrequently - which can be placed in more than one of these broad use categories, when it would only be a ban in one of the use categories, it would still be a ban that would have to be observed and the prior informed consent procedure would apply. There are quite a number of chemicals which are being used as pesticides, for example, but are also used as industrial chemicals. There are also industrial chemicals which are not infrequently components of consumer chemicals. The only way forward that the expert group advised to us to be clear on interpretation of bans and severe restrictions reported to us, was to recommend governments that when notifying under the London Guidelines, prohibitions of all uses or prohibitions of most uses, bans and severe restrictions, they would have to clearly indicate whether it was in one use category - agricultural or industrial or consumer chemicals - or if it was in more than one use category. However, one use category would be sufficient. There are a number of such bans or severe restrictions presently in our database which had been reported by governments, where, for example, chemicals are banned from consumer products. Lead in paint of children's toys is one example, but there are more.

We have recently submitted this recommendation of the joint FAO/UNEP group of experts to a Working Group of government experts which the UNEP Governing Council has requested should be convened to report on implementation of the London Guidelines and difficulties faced by governments in implementation and we have submitted the recommendation to the ad hoc group of government experts and it was accepted. We have the intention to issue this, very soon, to all designated national authorities under the London Guidelines. There are now almost 100 countries which have indicated to participate in an operations guidance manual in which we would request governments to clearly indicate when notifying chemicals under the London Guidelines whether the ban or severe restriction was in one, two or all three use categories, but one use category would suffice. Mr. Chairman, I thought this was an important piece of information which should be considered by the delegations. Thank you.